

Overseas (non-)parties and contempt

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I Introduction

- [1] Can a party who is located overseas be in contempt of the New Zealand court? The purpose of this piece is to sketch out an answer to this question. I use the term “overseas” to refer to parties who do not have a presence in New Zealand (in other words, they are exclusively located overseas).
- [2] In the recent case of *Sunny Pty Ltd v Mega Aqua Ltd* [2025] NZHC 3482, discussed [here](#) by Jack Wass, the application to enforce an Australian subpoena arose in the context of New South Wales contempt proceedings against a New Zealand-resident, Mr Wu. The contempt proceedings had been served out of the jurisdiction (*In the matter of Sunny Pty Ltd* [2024] NSWSC 415), in circumstances where Mr Wu was not a party to the substantive proceeding but had allegedly provided false information for use in the proceeding. The contempt proceedings could not be served out of Australia under the Trans-Tasman Proceedings Act 2010 (Cth), which excluded “criminal proceedings”. However, they could be served outside of Australia as an originating process under r 11.5 of the UCPR.
- [3] These or similar circumstances could well arise in New Zealand, which may require the court to consider questions of personal jurisdiction, subject-matter jurisdiction and enforcement jurisdiction.
- [4] Much of the focus of my analysis is on non-parties. I use the term “non-party” to refer to persons against whom a plaintiff could not assert a cause of action before the New Zealand court.

II Enforcement jurisdiction

- [5] Enforcement of New Zealand court orders is strictly territorial, in the sense that imprisonment is only available for persons physically located in New Zealand, and sequestration is only available in relation to property located in New Zealand. This means that, even if the court has personal jurisdiction and subject-matter jurisdiction to hold a person in contempt, the order may not be practically enforceable in New Zealand where the person is an overseas party without property in New Zealand. The order also probably would not be enforceable by the courts where the person is located (see Part IVA, [26]); and insofar as criminal contempt is concerned, it is unlikely to constitute an extraditable offence (see s 4, Extradition Act, 1999).

III Personal jurisdiction

- [6] The court can only make an order for contempt in a civil proceeding if the contemnor is subject to its personal jurisdiction (see [24]) for criminal proceedings). While the court has jurisdiction as of right over persons who are present in New Zealand, its personal jurisdiction over overseas persons depends on the existence of a rule permitting service outside of the jurisdiction. An application for contempt that is brought against an overseas person must be served outside of New Zealand in accordance with such a rule. However, service out is not necessary where the court already enjoys personal jurisdiction over the person and the order for contempt would be incidental to that jurisdiction: *Vik v Deutsche Bank AG* [2018] EWCA Civ 2011, [2019] 1 WLR 1737 at [55], in relation to the director of company who had breached an order to attend court that had been served on him while he was present in the jurisdiction).
- [7] In *In the matter of Sunnya Pty Ltd* [2024] NSWSC 415, the Court granted leave for service out of Australia under r 11.5 of the UCPR, which applies where the claim has a “real and substantial connection with Australia”. Although the proceedings involved criminal contempt, the Court was satisfied that the contempt motion amounted to an “originating process” for the purposes of r 11.5, as defined in s 3 of the Civil Procedure Act 2005 (NSW). However, the contempt proceedings could not be served outside of Australia under the Trans-Tasman Proceedings Act 2010 (Cth) because, in substance, they fell within the definition of criminal proceedings as excluded by the Act, that is, “a procedure other than a prosecution that, under an Australian law, may be used to determine liability for an offence” (at [6]). A different conclusion may be available for proceedings involving civil, rather than criminal, contempt (but see *Siemer v Solicitor-General* [2009] NZCA 62, [2009] 2 NZLR 556). If so, New Zealand proceedings for civil contempt could be served on an Australian (non-)party under the Trans-Tasman Proceedings Act (at least if, under Australian law too, the contempt would be civil in nature).
- [8] More generally, rr 6.27 and 6.28 of the High Court Rules apply to the service outside of New Zealand of “originating documents”. An “originating document” is a document “that initiates a civil proceeding”. Applications under s 16(2) of the Contempt of Court Act 2019, which provides for the enforcement of courts orders, must be made by way of originating application under Part 19 (r 19.2), as does “an originating proceeding for contempt of court” more generally (r 19.3).
- [9] Section 16 would not be available where a non-party interfered with an order made against another party (by, for example, assisting with the defendant’s breach, or subverting an order by destroying its subject-matter, or obstructing another’s compliance with the order) (but cf r 25.40). This means that such applications for contempt would have to proceed under r 19.3. It is not clear whether s 16(2) was intended to apply to orders contra mundum. The fact that the Act is intended to abolish the common law contempts of disobeying courts orders (s 3(3)(a)(v)) suggests that that it does apply.
- [10] The application must satisfy one of the gateways of rr 6.27 or 6.28, which is not an onerous requirement in this context. If the proceeding relates to contempt under s 16 of the Contempt of Court Act, it might fall within r 6.27(2)(j), which provides for service of claims arising “under an enactment” if “any [relevant] act or omission” took place in New Zealand (para (i)) or “any [relevant] loss or damage” was sustained in New Zealand (para (ii)). Alternatively, and regardless of whether the application is made under the Act or not (ie under r 19.2 or r 19.3), r 6.27(2)(h) might be available where the non-party is “a necessary or proper party to proceedings properly brought against another defendant [who is subject to the court’s personal jurisdiction]” – for example, where a director has participated in the breach of an order made against the defendant company (*Integral Petroleum SA v Petrogat FZE* [2018] EWHC 2686, [2019] 1 WLR 574 at [89],

[95]; although this decision may be controversial to the extent that the defendant company was not a party to the contempt application: D Foxton “The Jurisdictional Gateways — Some (Very) Modest Proposals” [2022] LMCLQ 71 at 90).

- [11] If r 6.27 does not apply, the court may still grant leave for service outside of New Zealand under r 6.28 if the claim has “a real and substantial connection with New Zealand” (the equivalent of r 11.5(5) of the UCPR). In *Sunnya*, the NSW Court considered that the claim “plainly has a real and substantial connection with Australia, where it alleges a contempt committed which would have had a real effect upon the conduct of Australian proceedings” (at [11]). By way of comparison, both Singapore and the United Kingdom have now introduced standalone gateways for contempt proceedings (CPR PD 6B, para 3.1(24) (UK); Rules of Court 2021 (Sing), PD 63(3)(t)).
- [12] The court’s assumption of jurisdiction under rr 6.27 and 6.28 is discretionary and subject to New Zealand being the appropriate forum for the claim. However, in the context of contempt proceedings, there would not usually be another available forum to determine the action. A foreign court would not have jurisdiction to determine a proceeding for contempt of the New Zealand court. In *Sunnya*, the NSW Court considered that “Australia is an appropriate forum for the trial, where the contempt is a contempt of this Court, and this Court is plainly the appropriate forum to determine whether that contempt was committed” (at [11]).
- [13] In these circumstances, the case for service outside of the jurisdiction may appear to be clear-cut. Thus, the NSW Court concluded that it “should assume jurisdiction, since only this Court could properly determine whether such a contempt was committed against it” (at [11]). However, there are at least two reasons why New Zealand courts ought to tread cautiously.
- [14] First, contempt applications that are formally classified as a civil proceeding for the purposes of the High Court Rules may, in substance, be concerned with criminal or quasi-criminal conduct that is sanctioned as such (see *Young v Zhang* [2017] NZCA 622, [2018] NZAR 207 at [42]). New Zealand law does not usually allow for service of criminal process to be effected overseas (*M-I New Zealand Ltd v Auckland District Court* [2007] NZAR 222 at [24]), unless it is based on an international agreement to that effect (see s 51, Mutual Assistance in Criminal Matters Act 1992). In a case involving service by the Solicitor-General (s 16(2)(c)), service may be considered contrary to principles of public international law (Marcus Teo Wei Ren “Service out for scandalising contempt: an international constitutional jurisdiction?” [2019] Singapore Journal of Legal Studies 477 at 482).
- [15] Second, depending on the facts of the case and the nature of the alleged contempt, the court may lack subject-matter jurisdiction to make the order.

IV Subject-matter jurisdiction

- [16] I use the term subject-matter jurisdiction to describe – in addition to any personal jurisdiction that is needed – the court’s adjudicative authority over a matter that is not entirely domestic (see *CLNZ* at ch 2E). Where the court’s adjudicative authority goes hand in hand with the application of the *lex fori*, because the issue is one that is exclusively governed by the *lex fori*, the terms subject-matter jurisdiction and prescriptive jurisdiction overlap.

- [17] Basically, the question is whether, assuming there is a basis for service out of New Zealand, the court has jurisdiction to hold the overseas (non-)party in contempt. This question is surprisingly complex, for three reasons.
- [18] The first is the quasi-criminal, or public, nature of contempt proceedings, which involve the court asserting a higher degree of sovereign authority than an ordinary civil dispute. The goal of contempt is *not* to determine the private rights and obligations of the parties (or non-parties); it is to protect the proper administration of justice (see David Rolph *Contempt* (Federation Press, 2023) at 7). This matters because there may be principles of international law that constrain the assertion of this quasi-criminal, public jurisdiction (see generally Campbell McLachlan “On the interface between public and private international law” (2025) 446 *Recueil des Cours* 9 at ch X, who makes the point (at 204) that “in determining the extent of jurisdiction, regard must also always be had to the legitimate claims to jurisdiction of the other State”). The question is whether there is a “sufficient connection” (*Masri v Consolidated Contractors International Company SAL* [2008] EWCA Civ 303, [2009] QB 450 at [31]), taking account of competing claims to jurisdiction over the relevant person or conduct. In the criminal context, New Zealand law has traditionally relied on the territoriality principle to guide its prescriptive jurisdiction (Crimes Act 1961, s 7), but the contours of this principle depend on the nature of the issue and are best evaluated by reference to relevant state practice (see Alberto Costi (ed) *Public International Law: A New Zealand Perspective* (LexisNexis, 2020) at 386, noting that “[a] challenging issue to the traditional application of the territoriality principle relates to what has been termed ‘de-territorialized’ crime, such as in cyberspace”).
- [19] The second, and related, reason arises in the context of applications against non-parties, due to the complex nature of non-party jurisdiction (for a US perspective, see Aaron D Simowitz and Linda J Silberman “Nonparty Jurisdiction” (2022) 55 *Vanderbilt Journal of Transnational Law* 433; Hannah Buxbaum “Civil Contempt Orders Against Non-Parties in Parallel Proceedings” (20 November 2025) TLB <<https://tlblog.org/civil-contempt-orders-against-non-parties-in-parallel-proceedings/>>).
- [20] Where allegations of contempt are made against a party, the court’s subject-matter jurisdiction over the contempt can be justified by reference to the subject-matter jurisdiction over the dispute itself, at least where the contempt relates to the breach of an order (“[i]f you join the game you must play according to the local rules”: *MacKinnon v Donaldson Lufkin & Jenrette Securities Corp* [1986] Ch 482 at 494; *Mansour v Mansour* [1989] 1 FLR 418). In *Attorney-General for England and Wales v Tomlinson* [1999] 3 NZLR 722, the Court concluded that the defendant could be in contempt for breaching a non-publication injunction in relation to actions taken after he had left New Zealand, even if his actions did not result in publication within New Zealand.
- [21] However, where the contempt is that of a non-party, the court’s authority is not ancillary to an existing subject-matter jurisdiction grounded in civil rights and obligations vis-à-vis the non-party. Again, the nature of non-party jurisdiction tends to be more public or regulatory, which may change the way that public international law views the assertion of this kind of jurisdiction (cf the original hesitation regarding service on overseas non-parties, ie “[a]bsent a claim based on a legal right which the defendant can be called upon to answer: *Mercedes-Benz AG v Leiduck* [1996] AC 284 (PC) at 301-302). For example, Campbell McLachlan, in a 1998 article, once described this kind of subject-matter jurisdiction as “a pure enforcement jurisdiction (as distinguished from the original jurisdiction which [the court] may exercise in relation to the parties to the dispute)”, in the context of an analysis of third-party disclosure orders (“The Jurisdictional Limits of Disclosure Orders in Transnational Fraud Litigation” (1998) 47 *ICLQ* 3 at 26).

[22] The third reason why this question is so complex is that there are three distinct issues of subject-matter jurisdiction that may arise, which I will analyse in turn below:

- first, whether jurisdiction over the contempt proceeding may exist even though the (non-)party is overseas at the time of the proceeding (Part A);
- second, where the basis of the contempt is the breach of an order, whether the (non-)party was bound by the order despite being overseas (Part B); and
- where the basis of the contempt was an interference with the administration of justice, whether there is subject-matter jurisdiction under the rules of contempt in relation the conduct of the overseas (non-)party (Part C).

[23] The special position of directors, officers or agents of a body corporate is discussed in Part V.

A Contempt jurisdiction even though (non-)party is overseas at the time of the proceeding

[24] Is it possible for the court to have jurisdiction in contempt proceedings even though the (non-)party is overseas at the time of the proceeding? If the proceeding is criminal nature (see, eg, s 22 of the Contempt of Court Act 2019, which makes it an offence to publish a false statement about a court or a judge), the court might be unable to proceed in the absence of the defendant (s 118, Criminal Procedure Act 2011). In criminal proceedings, extradition is the main mechanism to deal with defendants who are overseas. If the proceeding is not criminal, and there is a basis for serving the (non-)party outside of New Zealand (that is, the court may assume personal jurisdiction), the person's absence from New Zealand is not, in itself, a jurisdictional barrier. It is not unheard of for common law courts to hear contempt proceedings against non-parties located outside of the jurisdiction (see, eg, *Dar Al Arkan Real Estate Development Co v Refai* [2014] EWCA Civ 715, [2015] WLR 135; *Vik v Deutsche Bank AG* [2018] EWCA Civ 2011, [2019] 1 WLR 1737).

[25] If the contempt order would be practically unenforceable in New Zealand because the (non-)party is overseas (and has no property in the jurisdiction), this may be a factor weighing against the exercise of jurisdiction, but it need not be determinative: see *Dar Al Arkan Real Estate Development Co v Refai* [2014] EWCA Civ 715, [2015] WLR 135 at [50], [15(v)]. The risk of being found in contempt may have a deterrent effect even if the order would be practically unenforceable. By the same token, an order may induce compliance even if it is not practically enforceable – for example, because the contemnor faces the possibility of imprisonment if they decide to travel to New Zealand.

[26] If the order is practically unenforceable in New Zealand, it is unlikely to be enforceable at all. That is because courts do not usually assist with the enforcement of foreign public claims (see, from a New Zealand perspective, *CLNZ* at [5.172]; see, more generally, Campbell McLachlan *Foreign Relations Law* (CUP, 2014) at ch 11). By enforcing a New Zealand contempt order, the foreign state would make an exception to its otherwise exclusive jurisdiction to enforce its own prescriptive jurisdiction over sovereign matters within its territory, which is why such acts of cooperation tend to be the result of international agreement (but cf penalty payments against parties: *De Fontbrune v Wofsy* 838 F 3d 992 (9th Cir 2016); HcCH “Treatment of penalty orders that are imposed on the non-compliance with non-monetary judgments under the 2018 draft

Convention” ([Prel Doc No 3 of February 2019](#) for the attention of the Twenty-Second Session on the Recognition and Enforcement of Foreign Judgments (18 June – 2 July 2019)). However, the fact that the order would not be enforceable overseas due to its sovereign character does *not* mean that the court hearing the contempt proceedings exceeded its jurisdiction under international law (but see Marcus Teo Wei Ren “Service Out for Scandalising Contempt: An International Constitutional Jurisdiction? [2019] Singapore Journal of Legal Studies 477 at 481-482).

- [27] The Trans-Tasman Proceedings regime includes provisions for the mutual enforcement of certain civil penalties and criminal fines (see Part 2, Subparts 7 and 8; see art 5(7) of the Agreement between the Government of New Zealand and the Government of Australia on Trans-Tasman Court Proceedings and Regulatory Enforcement (signed 24 July 2008, entered into force 11 October 2013, which provides that recognition and enforcement of registrable judgments shall not be refused on the basis that this would involve “the direct or indirect enforcement of a foreign public or revenue law”). However, fines for contempt do not clearly fall within either Subpart. It would not be a “civil pecuniary penalty”, that is, “a pecuniary penalty imposed in a civil proceeding in relation to a contravention of legislation” (s 4(1)); and it would not meet the definition of a “regulatory regime criminal fine” (s 4(1)). In the context of remote appearances from New Zealand in Australian proceedings, the Australian court may not exercise its power to punish for contempt (s 45), but the New Zealand court may enforce certain orders made by the Australian court under s 46, including by way of contempt (s 47; see also s 87). Section 50 provides for contempt offences committed by a person in New Zealand appearing remotely before an Australian court.

B Breach of an order

- [28] A (non-)party can only be held in contempt for breaching an order if the court had jurisdiction to bind the party in the first place. If the (non-)party breaches an order that has been made against them, and there was jurisdiction to make the order, there is no reason in principle why the court should lack jurisdiction in contempt.
- [29] What are the circumstances in which the court may make an order against an overseas non-party (the breach of which may then amount to contempt)? The court must have had personal jurisdiction and subject-matter jurisdiction to make the order against the non-party. Importantly, the overseas presence of the non-party is not only relevant to personal jurisdiction, and the discussion below will focus on the question of subject-matter jurisdiction.
- [30] The existence of subject-matter jurisdiction over non-parties depends on the meaning, nature and purpose of the rule forming the basis for the order (see [20] above for the different justification that applies to jurisdiction vis-à-vis parties).
- (a) There may be a statutory rule that expressly confers jurisdiction over the conduct of non-parties located overseas, which courts would be obliged to apply in accordance with its terms.
 - (b) In the absence of an explicit rule, courts must be mindful of the need for a sufficient connection, based on “the legitimate claims to jurisdiction of the other State” (see McLachlan, above at [18]), drawing on relevant state practice where possible.

- (c) Courts must be especially careful where the order would instruct a non-party to act in a way that would breach the law of the place where they are located (for example, the order would require a bank to disclose information but disclosure would be in breach of the bank's local rules requiring confidentiality: see "The Jurisdictional Limits of Disclosure Orders in Transnational Fraud Litigation" (1998) 47 ICLQ 3).
- (d) In some cases, the New Zealand court may be the only forum that would be able to make the order. However, this need not mean that there is a sufficient connection for the purposes of subject-matter jurisdiction. The only appropriate solution may be one that is based on international cooperation (see McLachlan "The Jurisdictional Limits of Disclosure Orders in Transnational Fraud Litigation" at 49, warning against unilateralism).
- (e) Where the purpose of the order is the effective administration of justice in a civil dispute (for example, the power to obtain evidence), the court will not usually have – or exercise – subject-matter jurisdiction to regulate the conduct of overseas non-parties (for example, it will not summon an overseas non-party to give evidence). A different conclusion may be available in exceptional cases, or in cases involving property or evidence located in New Zealand.
- (f) Where the purpose of the order is to prevent or respond to wrongdoing, the non-party's absence from New Zealand may not be barrier to subject-matter jurisdiction, but there would still need to be a sufficient connection to New Zealand.

(a) Disclosure

[31] In *MacKinnon v Donaldson Lufkin & Jenrette Securities Corp* [1986] Ch 482, Hoffmann J held that a bank with a presence in England could not be ordered to produce documents held at its New York head office, because the court would only exercise its "subject-matter jurisdiction" to make such an order in exceptional cases (at 493): "It does not follow from the fact that a person is within the jurisdiction and liable to be served with process that there is no territorial limit to the matters upon which the court may properly apply its own rules or the things which it can order such a person to do." The case was not concerned with an overseas non-party because the bank had a presence in England. However, where the extraterritorial acts are those of an overseas non-party, Hoffmann J's concerns about subject-matter jurisdiction have even greater weight. In such cases, there is no "enforcement jurisdiction" based on the party's territorial connection to the forum (in the sense used by McLachlan "The Jurisdictional Limits of Disclosure Orders in Transnational Fraud Litigation" at 26, describing the court's power to make orders that are concerned with enforcement, rather than actual enforcement of the order itself, which, if it took place on the foreign territory where the non-party is located, would necessarily be contrary to international law).

[32] Thus, Hoffmann J referred to the issue of a subpoena as "an exercise of sovereign authority to require citizens and foreigners *within the jurisdiction* to assist in the administration of justice" (at 494, emphasis added); and suggested that there were "only two ways in which" evidence could be obtained from a non-party *without a presence* in the jurisdiction: by sending a letter of request to the foreign court (pursuant to the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters 847 UNTS 231 (opened for signature 18 March 1970, entered into force

7 October 1972 (Hague Evidence Convention)) or by applying to the foreign court directly (at 490-491).

- [33] The court will also usually refrain from making a Norwich Pharmacal order against an overseas party, even though formally the party is joined as a defendant to the proceeding: *AB Bank Limited, Off-shore Banking Unit v Abu Dhabi Commercial Bank PJSC* [2016] EWHC 2082, [2017] 1 WLR 810; Lawrence Collins and Jonathan Harris (eds) *Dicey, Morris and Collins on the Conflict of Laws* (16th ed, Sweet & Maxwell, London, 2022) at [10-085].
- [34] There are several cases in which the English High Court granted Bankers Trust Orders against parties without a presence in the jurisdiction in cases involving cryptocurrency fraud: *Ion Science Ltd v Persons Unknown* [2020] EWHC 3688 at [21]; *Fetch.ai Limited v Persons Unknown Category A* [2021] EWHC 2254 at [29]-[30]; *D'Aloia v Person Unknown* [2022] EWHC 1723 at [35]; *LMN v Bitflyer Holdings Inc* [2022] EWHC 2954 at [36]-[37]; see also *Tonstate Group Ltd v Wojakovski* [2024] EWHC 975 (involving fraud, but not cryptocurrency fraud). The judgments place reliance on Hoffmann J's dictum that a subpoena requiring the production of documents outside of the jurisdiction by a foreigner is available "in exceptional circumstances" (such as the "hot pursuit" of missing funds) (*MacKinnon v Donaldson, Lufkin and Jenrette Securities Corporation* at 493, 498-499).
- [35] However, Hoffmann J was here talking about foreigners with a presence in the jurisdiction (such as a bank with a branch in London). The High Court's reasoning seems to "[confuse] personal jurisdiction, ie, who can be brought before the court" under its long-arm jurisdiction, "with subject matter jurisdiction, ie, to what extent the court can claim to regulate the conduct of those persons" who have no presence within the jurisdiction (adapting Hoffmann's language at 493).
- [36] It is notable in this context that the UK gateways for service out of the jurisdiction have been amended to include third party information orders (see PD 6B, para 3.1(25)). While the gateways themselves cannot confer subject-matter jurisdiction to make such orders, this expansion may reflect a greater willingness to infer and exercise the jurisdiction. The Rules Committee was concerned with "the Court's territorial jurisdiction to grant orders against non-parties for the provision of information where assets have been removed from the jurisdiction" and noted that this issue was "particularly acute in cases where a party has needed to identify the destination of money or cryptoassets and so has required information from a bank or exchange" (Civil Procedure Service Sub-Committee "[Proposed amendments to PD6B](#)").
- [37] The Law Commission of England Wales has proposed a new power to issue information orders to assist victims of crypto fraud, which could be served on intermediaries located in another country ([Digital assets and \(electronic\) trade documents in private international law: Consultation Paper](#) (5 June 2025) at [8.1]-[8.3]). The Law Commission has framed this proposed power "as an exception to [the] requirement for an 'adequate link' as is generally understood in the context of international civil and commercial litigation" (at [4.50]). In a helpful blog post, Koji Takahashi highlights the "radical nature" of the proposal and explains that "the primary goal of the proposal is to prevent technology from creating a space where justice cannot reach and criminals can operate with impunity" (Koji Takahashi "[The Law Commission's Proposed Free-Standing Information Order](#)" (5 November 2025) [EAPIL](#)).
- [38] Finally, there is authority for the proposition that the non-party's presence may not be necessary where the order is concerned with documents located within the jurisdiction. In *Gorbachev v Guriev* [2022] EWCA Civ 1270, [2023] 2 WLR 1, the Court decided that it had jurisdiction to make a non-party disclosure order against a non-resident third party under s 34 of the Senior

Courts Act 1981 in relation to documents that were held electronically by the non-party's solicitors in the United Kingdom (and there was an argument that the order should not be made directly against the solicitors). The Court acknowledged that "wide-ranging disclosure of documents held by third parties abroad" would "infringe international comity in ways that would be objectionable to foreign states"; and that such orders "could not readily be enforced unless the persons against whom they were made chose to come within the jurisdiction" (at [82]). However, the Court considered that where the documents are located within the jurisdiction, "the principle of territoriality has little or no application" (at [84]). In such cases, there is no "illegitimate interference with the sovereignty of the state where the owners of the documents ... are located" (at [84]), and there will be "no difficulty in enforcing any order for their production" (at [86]).

- [39] The Court left open the question whether the court would have jurisdiction, in exceptional circumstances, to make such an order where the documents are located elsewhere (at [89]-[90]; but cf Hoffmann J in *MacKinnon v Donaldson Lufkin & Jenrette Securities Corp* at 490-491).

(b) Evidence

- [40] I have already referred to Hoffmann J's dictum in *MacKinnon v Donaldson Lufkin & Jenrette Securities Corp* that there are only two ways in which evidence could be obtained from a non-party without a presence in the jurisdiction: by sending a letter of request or by applying to the foreign court directly. Hoffman J noted that the UK Government itself had objected to foreign subpoenas being issued against non-parties in England (at 493-494; but cf the Australian Federal Court's conclusion that it was appropriate to serve a subpoena on a company in the United Kingdom because "the receipt of subpoenas in the United Kingdom from foreign jurisdictions is not, *prima facie*, regarded as an interference in that country's sovereign affairs": *Mining Standards International Pty Ltd v Atlantic Nickel Mineracao Ltda (No 5)* [2025] FCA 1261 at [53]).
- [41] In *Masri v Consolidated Contractors International Company SAL* [2009] UKHL 43, [2010] AC 90, the House of Lords concluded that the rule-making power under the Civil Procedure Act 1997 extended to "extra-territorial" rules of court, rejecting the submission "that the rule-making power in respect of persons outside the jurisdiction must exclude 'purely procedural powers against non-parties'" (at [14]). However, the House of Lords also concluded that, properly interpreted, the rule in question did not confer powers of examination over a foreign director who was not otherwise before the English court.
- [42] Unpacking "the presumption against extra-territoriality" (at [16]), the Court referred to considerations such as "the existence of a close connection between a subject matter over which this country and its courts have jurisdiction" and the third party (at [19]), "impracticality of enforcement" (at [22]) and principles of comity and international law or practice (at [19], [24], referring to *In re Tucker (RC) (A Bankrupt), Ex p Tucker* [1990] Ch 148, where the Court stated at 158 that "the general practice in international law is that the courts of a country only have power to summon before them persons who accept service or are present within the territory of that country when served with the appropriate process"). Section 36 of the Supreme Court Act excluded the possibility of "requiring an ordinary witness outside the jurisdiction to attend for examination within the jurisdiction" (at [14]). In "[p]rivate civil litigation", parties had "no right to ask the court to summon witnesses from abroad" to ensure access to full information (at [23]).

The power to order examination of a foreign director in CPR 71.2 did not raise sufficiently different considerations to displace the presumption of territoriality (at [26]).

- [43] The Court distinguished *In re Seagull Manufacturing Co Ltd* [1993] Ch 345, where the Court of Appeal had concluded that s 133 of the Insolvency Act 1986 conferred powers of examination over a former director located outside of the jurisdiction, by reference to two factors (at [23]): the ability to subject former directors of insolvent companies to examination was in the public interest, and a winding up order was universal in nature, “in the sense that it relates at least in theory to all assets wherever situate”.

(c) Freezing orders

- [44] In certain circumstances, courts may grant freezing orders against non-parties who are in control of the defendant’s assets or who may have an obligation to use their assets to satisfy the defendant’s judgment debt: r 32.4, HCR. According to the High Court of Australia, the purpose of such orders is to protect the administration of justice: *Cardile v Led Builders Pty Ltd* (1999) 198 CLR 380 at [25].

- [45] It seems to be well-accepted that such an order can be made in relation to property within the jurisdiction even if the non-party is located outside of the jurisdiction (assuming there is a basis for personal jurisdiction): *Parbulk II AS v PT Humpuss Intermoda Transportasi TBK* [2011] EWHC 3143. In other words, the fact that the non-party is overseas does not present an obstacle for subject-matter jurisdiction in such cases.

- [46] There are cases that suggest that such an order could also be made in relation to property outside of the jurisdiction, but these cases do not squarely address the question of subject-matter jurisdiction (as distinct from personal jurisdiction): see, eg, *Commercial Bank of Dubai PSC v Al Sari* [2024] EWHC 3304 at [269], [243]-[244] (obiter); *C Inc v L* [2001] 2 Lloyd’s Rep 459 (where the Court made an order against a non-party in Guernsey over his assets within and outside of the jurisdiction); see also *Yukos Capital Sarl v OJSC Rosneft Oil Co* [2010] EWHC 784. However, in *Parbulk II AS v PT Humpuss Intermoda Transportasi TBK* [2011] EWHC 3143, where the non-party had submitted to the Court’s jurisdiction, the Court confined the order to assets within the jurisdiction because of “subject matter jurisdictional” considerations: at [87]-[88].

- [47] Similarly, where a freezing order is granted in aid of foreign proceedings (in other words, the respondent is not a defendant to a cause of action in the forum), but the respondent is not located in the forum, relief will usually be limited to property within the forum: *CLNZ* at [3.183]; see *Mex Group Worldwide Ltd v Ford* [2024] EWCA Civ 959, [2025] 1 WLR 975 for a summary of the relevant English principles. In this context, there may be no competing “legitimate claims to jurisdiction” of other states because the respondent is a substantive defendant (albeit in another jurisdiction) and the freezing order is an act of cross-border cooperation.

- [48] The special position of directors, officers or agents of a body corporate is discussed below in Part V.

(d) Order setting aside transactions

[49] There are provisions for setting aside transactions under the Property Law Act 2007 (pt 6, sub-pt 6), Insolvency Act 2006 (pt 3, sub-pt 7) and Companies Act 1993 (ss 287-300). Provisions of this kind have generally been interpreted broadly: *Springfield Acres Ltd (in liq) v Abacus (Hong Kong) Ltd* [1994] 3 NZLR 502 (HC) at 508, following *Re Paramount Airways Ltd (in admin)* [1993] Ch 223 (CA). They are not limited to defendants within the jurisdiction, “so will apply to payments made by a New Zealand debtor to an overseas defendant, although the international aspects of the case will be relevant to the court’s exercise of its discretion” (CLNZ at 10.110); and there has to be a sufficient connection between the jurisdiction and the defendant (see *AWH Fund Ltd (In Compulsory Liquidation) v ZCM Asset Holding Company (Bermuda) Ltd* [2019] UKPC 37 at [40]-[41] and [55]). This broad jurisdiction can at least in part be explained by the principle of universality that is of particular relevance in the insolvency jurisdiction: see *Masri v Consolidated Contractors International Company SAL* [2009] UKHL 43, [2010] AC 90 at [23]; cf *R (KBR Inc) v Director of the Serious Fraud Office* [2021] UKSC 2, [2021] 2 WLR 335 at [60]-[63].

(e) Non-disclosure/take-down orders

[50] Can the court make an order to stop an overseas non-party from publishing information, or to require it to take down information online? This is a question that has become especially important in the digital era. The answer depends on the source of the power to make the injunction, but generally speaking, the non-party’s absence from the jurisdiction makes subject-matter jurisdiction more difficult (but cf Michael Douglas “Extraterritorial injunctions affecting the internet” (2018) 12 *Journal of Equity* 34, who is critical of the term “subject-matter jurisdiction” in relation to such injunctions).

[51] In the context of a private law claim like defamation, publication (and harm) in New Zealand would usually lead to the claim being governed by New Zealand law. In the different context of an order being made against a non-party, publication in New Zealand might be insufficient to establish subject-matter jurisdiction, especially if the order also affects publication overseas (but see [A&B v C \[2007\] HCFI 815](#), where the Hong Kong Court made an order against an overseas non-party who had published information online that it had obtained as a result of improper disclosure made under a Norwich Pharmacal order).

[52] It may be appropriate to draw parallels with private law claims like defamation if the order is designed to protect another party’s rights and obligations, and failure by the non-party to act consistently with the order would be akin to private law wrongdoing, even though no cause of action is made out against them.

[53] Thus, in *Google Inc v Equustek Solutions Inc* 2017 SCC 34, [2017] 1 SCR 824, the Canadian Supreme Court decided that Google could be ordered to de-index a defendant’s websites that were in breach of the plaintiff’s intellectual property, and to do so globally (because otherwise the injunction would not be effective). Google had been found to be subject to the personal jurisdiction of the British Columbia courts because it carried on business in the province (at [38]). If Google had not been present within the jurisdiction, an injunction may not have been available; although the relatively lax approach to the meaning of “presence” suggests a willingness to take a generous approach to jurisdiction. The substantive basis for the injunction was that, as a non-party, Google was “so involved in the wrongful acts of [the defendant]” that it facilitated the harm (at [31]), although it was not guilty of contempt for interfering with the court order by aiding and abetting its breach (at [68]-[71]). The Court did not consider that there

were comity and freedom of expression issues that militated against the grant of the injunction (at [45]-[46]).

- [54] In *X v Twitter, Inc* [2017] NSWSC 1300, 95 NSWLR 301, the New South Wales Supreme Court granted a worldwide injunction against Twitter to remove certain tweets. The Court assumed that Twitter had no presence in the jurisdiction. However, the application for an injunction was accompanied by a substantive claim, which was that Twitter was subject to an equitable obligation of confidence (at [17]). It was not, therefore, a non-party as conceptualised here.
- [55] The more “public” the nature of the order, the more it may be thought to interfere with another country’s jurisdiction to regulate speech, unless there is (developing) international practice to support the existence of prescriptive jurisdiction. In *Google Inc v Commission nationale de l’informatique et des libertés (CNIL)* Case C-507/17 (2019), the European Court of Justice concluded that the right to be forgotten under European law applied only in Europe, enabling Google to use geo-blocking so that delisted links could still feature in searches outside of Europe. Google had argued that CNIL’s interpretation “disregarded the principles of courtesy and non-interference recognised by public international law” (at [38]). But another view is that the right to be forgotten has foundations in international law, which would mean that CNIL’s interpretation *could* be consistent with international principles of prescriptive jurisdiction (see Oskar J Gstrein “The judgment that will be forgotten” (25 September 2019) *Verfassungsblog* <<https://verfassungsblog.de/the-judgment-that-will-be-forgotten/>>).

(f) Non-disclosure/take-down orders contra mundum

- [56] In *Re Olsen* [2022] NZHC 1781, the High Court issued a take-down order for a website impersonating a New Zealand barrister. The website was hosted overseas but there was no discussion of the court’s jurisdiction over overseas non-parties, and the order was not made against the company directly. If the court makes a non-publication or suppression order against the world, can this include persons overseas for the purposes of contempt?
- [57] One problem in cases such as this is that the court will not have established personal jurisdiction over the (non-)party prior to any proceeding in contempt, because they will not have been a named party to the order. As a matter of principle, it seems that it should not be possible to treat an overseas person as being bound by an order where the court did not have personal jurisdiction over them in relation to the order (although cf Part V below). The court has no power to make an order against overseas persons (*Waterhouse v Reid* [1938] 1 KB 743 at 747 per Greer LJ). There has to be a statutory mechanism that gives it this power, such as rr 6.27 and 6.28.
- [58] In terms of subject-matter jurisdiction, it may not be sufficient that publication occurred in New Zealand (as discussed in part (e) above), especially if publication in New Zealand was part and parcel of worldwide publication. Competing claims to jurisdiction, by countries with an interest in freedom of expression, loom large here.
- [59] In *Re Olsen*, the rationale for the order was the “obvious risk to the public arising from the impersonation of an officer of this Court” (at [19]). Perhaps jurisdiction can be explained on the basis that the non-party was implicated in another’s wrongdoing (cf *Equustek*), and that there was no competing claim to regulate a scam focused on New Zealand (although there may have been a more general competing claim to regulate the duties of the webhosting company).

- [60] To the extent that the breach of the order would be a criminal offence (see, eg, s 211 of the Criminal Procedure Act 2011), a criminal proceeding could not be served on the defendant outside of the jurisdiction under the High Court Rules, which does not mean, however, that the defendant did not commit the offence. There may be an argument that suppression orders that are enforceable as offences could still be enforceable under s 16 (see s 16(3)(a)) – in other words, that the offence provisions do not operate to the exclusion of s 16 – in which case there would be the possibility of service out of the jurisdiction (assuming s 16 applies to orders contra mundum); but this interpretation would introduce divergence between automatic suppression rules and suppression orders.
- [61] Earlier this year, the High Court made an order to stop the media from reporting certain information [in the Tom Phillips case](#). The order attracted widespread media commentary. One of the questions [that was raised](#) was the effect of the orders on overseas persons. Could the orders apply to, and be enforceable against, overseas media outlets or social media users who disseminate information online? Still fresh in everyone’s mind was the Telegraph’s decision to publish the name of Grace Millane’s murderer, despite an order for interim name suppression, on the basis that [“New Zealand law does not apply to our reporting”](#).
- [62] In this context, too, it is difficult to see how an order can bind an overseas person in the first place, unless the statute explicitly provides for this (see [57]).
- [63] Assuming the person can be treated as being bound by the order despite their absence from the jurisdiction, there is the question of subject-matter jurisdiction – whether an overseas person’s conduct can amount to a breach of the order. Burrows and Cheer suggest that an overseas organisation that publishes a suppressed name on its website may be committing an offence against New Zealand law “because an act necessary to the completion of the offence (that is, publication) occurs in New Zealand” (John Burrows and Ursula Cheer *Media Law in New Zealand* (8th ed, LexisNexis, 2021) at 514; cf *R v Standard 304 Ltd* [2008] NZCA 564, [2010] NZAR 194, where an advertisement available to be viewed or downloaded in New Zealand was sufficient to satisfy charges under s 57 of the Medicines Act (but the defendant was in New Zealand); *Nottingham v R* [2019] NZCA 344, where a blog available to New Zealanders was “published” in New Zealand for the purposes of a suppression order (but, again, the defendant was in New Zealand); cf Victorian Law Reform Commission *Contempt of Court* (February 2020) at [13-123]-[13-136]).
- [64] The purpose of territoriality as applied in the criminal context aligns with the need to keep the court’s contempt jurisdiction within appropriate bounds: in other words, to ensure New Zealand does not unduly interfere with competing claims to jurisdiction. Unless there is evidence of international practice supporting the extension of prescriptive (criminal) jurisdiction over the publication of suppressed information by overseas non-parties, international cooperation would be preferable to unilateral action. In fact, Commonwealth countries have been negotiating the possibility of mutual enforcement of suppression orders. At the Commonwealth Law Ministers Meeting in November 2022, Law Ministers accepted Expert Working Group’s recommendation that the Secretariat develop a model law on the enforcement of suppression orders (see [here](#), [44]-[46]).
- [65] There is an argument that New Zealand’s strong interest in the effectiveness of such orders gives it a claim to jurisdiction that cannot be trumped by another country’s interest in regulating speech. After all, from the perspective of New Zealand law, freedom of expression is no bar to the making of such orders domestically. But this argument is not straightforward, because different countries take different views on the appropriate boundaries of free speech.

- [66] More generally, if New Zealand asserts a broad jurisdiction to regulate speech based on New Zealand being a place of publication, it would have to accept the assertion of jurisdiction by other countries on the same basis (see Michael Douglas “Extraterritorial injunctions affecting the internet” (2018) 12 *Journal of Equity* 34 at 56-57 for the proposition that “Western courts’ willingness to issue extraterritorial injunctions is a moral hazard”). For example, in *Li Shengwu v Attorney-General* [2019] 1 SLR 1081, the Singapore Court of Appeal concluded that it had jurisdiction over an overseas contemnor for scandalising the court, in relation to statements he had made on Facebook that were critical of Singapore’s judiciary (cf, in New Zealand, the Contempt of Court Act, Part 2, Subpart 5). If the contemnor had been a New Zealand resident at the time of making the statement, the proceeding might have been considered an interference with New Zealand’s jurisdictional interests in regulating the speech of its residents.
- [67] The cross-border criminalisation of speech has proven contentious as a matter of international law. In *Kerajaan Malaysia v Lawyers for Liberty* [2025] 1 MLRA 327, Singaporean authorities had ordered a Malaysian NGO, under the Protection from Online Falsehoods and Manipulation Act 2019, to correct allegedly false statements on their website operating in Malaysia, in circumstances where the website was available to end-users in Singapore. The Malaysian court questioned whether, under international law, Singapore has prescriptive criminal jurisdiction to regulate the conduct of foreign nationals in this manner: see Dominic Bielby “*Kerajaan Malaysia v Lawyers for Liberty: At the Confluence of Fake News and Extraterritoriality*” (14 January 2025) EJIL Talk <https://www.ejiltalk.org/kerajaan-malaysia-v-lawyers-for-liberty-at-the-confluence-of-fake-news-and-extraterritoriality/>.

C Interference with administration of justice

- [68] Where the basis of contempt is not the breach of an order, the question is whether the court has subject-matter jurisdiction under the rule that proscribes the conduct that is said to amount to contempt. For example, a non-party may be guilty of criminal contempt if they aid and abet the breach of an order, but does this rule apply to an overseas non-party?
- [69] In this context, too, courts have traditionally proceeded with caution, emphasising the importance of the non-party’s presence within the jurisdiction (which is not to say that presence is needed if there is otherwise a sufficient connection to New Zealand). In *National Justice Compania Naviera SA v Prudential Assurance Co Ltd* [2000] 1 All ER 37 at 45, Waller LJ suggested in obiter that “if a non-party committed a contempt of the English court the fact that that non-party was outside the jurisdiction physically would not prevent the English court having jurisdiction to proceed to commit for contempt”; but there had been no citation of relevant authority and he did not clearly distinguish between parties and non-parties (*Tchenguiz v Akers Guernsey Court of Appeal 33/2015, 23 July 2015*).
- [70] To the extent that this type of contempt is classified as criminal in nature, it has been said that “the Court would have no jurisdiction in respect of acts done abroad, in the absence of specific statutory provision” (*R+Versicherung AG v Risk Insurance and Reinsurance Solutions SA* [2006] EWHC 1705 at [69] citing *Arlidge, Eady and Smith on Contempt* (3rd ed) at [3-40]). As discussed earlier (at [18]), the purpose of the principle of territoriality is to ensure that New Zealand does not unduly interfere with competing claims to jurisdiction.
- [71] Where the contempt falls within the High Court’s jurisdiction under r 19.3, service out of the jurisdiction would in principle be available under rr 6.27 and 6.28 (see Part III).

(a) Interference with court order

- [72] A person who interferes with, or “aids and abets the breach of”, a court order may be liable for criminal contempt: *Young v Zhang* [2017] NZCA 622, [2018] NZAR 207. Such an application for contempt would be made as an originating application under r 19.3 (*Taylor Bros Ltd v Taylors Textile Services (Auckland) Ltd* (1988) 1 PRNZ 495 (HC)).
- [73] There are parallels between the court’s subject-matter jurisdiction to hold an overseas non-party in contempt for interfering with a court order, and the court’s subject-matter jurisdiction to make such an order against the non-party directly (see Part IVB(c)). It would be odd if the court was able to insist on compliance with an order through the indirect means of contempt but lacked jurisdiction to make the order directly (in circumstances where a direct order would otherwise be appropriate: see *Acrow (Automation) v Rex Chainbelt Inc* [1971] 1 WLR 1676 at 1682 for the proposition that it is appropriate to make a direct order instead of proceeding in contempt, although this case was not concerned with an overseas non-party). In fact, there is an argument that subject-matter jurisdiction in (criminal) contempt should, in principle, be *more limited* than the court’s jurisdiction to make a direct order, which can usually be tailored to the facts of the case through an element of discretion and is not primarily designed to punish.
- [74] In *Derby & Co Ltd v Weldon (Nos 3 and 4)* [1990] Ch 65, the Court of Appeal stated generally that an overseas non-party is “not to be regarded as being in contempt” (at 82). The Court was concerned with the effect of freezing orders on non-parties. More specifically, the Court was concerned with cases involving overseas assets, and it is not clear whether the Court intended to rule out the existence of jurisdiction over overseas non-parties in all cases (for example, where the third party overseas takes acts in relation to assets in New Zealand). The Court’s revised *Babanaft* proviso, which was designed to accompany freezing orders and clarify their effect on non-parties, stated that overseas non-parties would not be affected “in so far as this order purports to have any effect outside England and Wales” (at [87]).
- [75] A version of the *Babanaft* proviso has been adopted in Form G 38 of the High Court Rules relating to freezing orders (see *Renaissance Securities (Cyprus) Ltd v Chlodwig Enterprises Ltd* [2023] EWHC 3160 for a discussion whether the proviso should also be included in anti-suit injunctions). Paragraph 11 states broadly that the contempt jurisdiction does not apply to non-parties without a presence in New Zealand. A non-party is treated as being present in New Zealand if they have a residence or place of business here (paragraph 11(b)(i)). In relation to non-parties with a presence in New Zealand, Form G 38 then contains further safeguards in relation to their “acts or omissions outside the jurisdiction” (paragraph 11(b)(ii)). By comparison, UK practice seems to be to include the proviso in worldwide freezing orders only (see [Appendix 11](#) of *The Commercial Court Guide* (11th ed, 2022)).
- [76] The special position of directors, officers or agents of a body corporate is discussed in Part V.
- [77] If there is no subject-matter jurisdiction in contempt, the plaintiff may still be able to obtain relief by suing the non-party as a defendant to an action, in accordance with the ordinary rules of private international law (including choice of law). For example, a non-party could itself be committing a civil wrong by publishing injunctioned information or, more generally, assisting in the breach of an order (see *JSC BTA Bank v Ablyazov (No 14)* [2018] UKSC 19; *Lakatamia Shipping Co Ltd v Su* [2025] EWCA Civ 1389).

(b) False statements

[78] In *KJM Superbikes Ltd v Hinton* [2008] EWCA Civ 1280, [2009] 1 WLR 2406, the Court accepted in principle that the rules of contempt applied to a foreign witness who had lied in his written evidence, noting that “[t]he integrity of the system as a whole would be undermined if it were thought that foreign witnesses were not subject to the same discipline as witnesses from this country” (at [26]). The New South Wales Court in *Sunnya* seemed to take the same position.

[79] In New Zealand, false statements are now dealt with under s 111 of the Crimes Act 1961, which means that the proceeding could not be served out of the jurisdiction. This means that, if the facts of *Sunnya* were to happen in New Zealand, the only option may be to seek extradition of the defendant to New Zealand. However, subject-matter jurisdiction under s 111 would be made out. A parallel can be drawn with s 108 of the Crimes Act on perjury, which applies where an overseas witness lies in their evidence to the New Zealand court. In *Omni Marketing Group, Asia Pte Ltd v Transactor Technologies Ltd* HC Auckland CIV-2007-404-430, 29 May 2008, the Court considered that overseas witnesses who give false evidence by video-link would commit perjury in New Zealand (at [29]; see now the Courts (Remote Participation) Act 2010). That was because the actus reus of perjury takes place in the New Zealand court: “It does not matter that the person giving evidence is situated outside New Zealand. By participating in a video conference they cause the visual and voice content of their evidence to be projected onto a screen in a New Zealand Court”.

(c) Other interference with administration of justice

[82] More generally, courts will not usually have, or exercise, jurisdiction over criminal contempt by “foreign nationals” in respect of acts “done abroad”: *R+Versicherung AG v Risk Insurance and Reinsurance Solutions SA* [2006] EWHC 1705 (at [69]-[71]), which was a case involving intimidation of a witness.

V The position of directors, officers or agents of a body corporate

[80] Finally, it is important to highlight the special position of officers or agents of a body corporate, to whom a breach of an order may be attributed (with the result that they may be held in contempt for the breach: Part IVB); or who, alternatively, may be liable in contempt for interfering with the order (for example, by aiding or abetting its breach) even though they were not bound to comply with it under any principle of attribution (Part C(a)).

[83] Section 16 applies to persons who are “bound” by an order, which presumably includes persons bound by an order under relevant principles of attribution, even though s 16 does not include a specific rule of attribution (for an analysis of the relevant principles in English law, see *ADM International SARL v Grain House International SA* [2024] EWCA Civ 33, [2024] 1 WLR 3262; see Law Commission *Reforming the Law of Contempt of Court* (NZLC R140, 2017) at [5.72]);

cf s 16(4)(a), which provides for enforcement against “the person or a director or an officer of the body corporate”).

- [84] In *Keemati Ltd v Civil Ltd (in liq)* [2022] NZHC 195 at [68]-[70], the High Court considered that a director was not “bound by the order” if they are not a party to the proceeding within the meaning of the High Court Rules, and that it would have been necessary for the order to have been formally made against them. The effect of the reasoning is that a breach of a company can only be attributed to its officers or agents if they are named in the order, even by way of a generic reference to “its officers and agents” (at [71]).
- [85] Where an officer or agent is named in a generic way, and the application for the order was not served on them outside of the jurisdiction, they can still be treated as being bound by the order (see [57] for further context). In other words, jurisdiction in relation to the breach of the order (ie the contempt) is not conditional on the original order having been served on the officer outside of the jurisdiction (*Horizon Maritime Services Ltd v CNS Marine Nigeria Limited* [2023] EWHC 1419). In the context of attribution, this position appears to be justifiable based on the court’s personal jurisdiction *over the company* (if the officer and the company are treated as one and the same for the purposes of the breach, perhaps they can be treated as one and the same for the purposes of personal jurisdiction).
- [86] This principle of attribution explains the “officers” exception to the *Babanaft* proviso. The proviso states that overseas non-parties will not be considered to have acted in contempt of the order (see [75] above), but it does not apply to overseas officers of parties bound by the order, or agents appointed by power of attorney of such parties (although the wording of the exception – “a person to whom this order is addressed, or an officer of that person, or an agent appointed by power of attorney of that person” – may not satisfy the requirement as formulated in *Keemati*). Officers/directors who are treated as being bound by an order are in a different position to ordinary non-parties (see *Masri v Consolidated Contractors International Co SAL* [2011] EWHC 409 at [85]-[89]). They can be required to comply with orders made against their company because a company “is only capable of acting by its agents” (*Dar Al Arkan Real Estate Development Co v Refai* [2014] EWCA Civ 715, [2015] WLR 135 at [32], [44], [46]).
- [87] In these latter two cases (and see *Integral Petroleum SA v Petrogat FZE* [2020] EWHC 558 for another example), the contempt jurisdiction was available in relation to the overseas acts of overseas officers: for example, in *Dar Al Arkan*, a failure to preserve two hard drives and the data on them, and to deliver the hard drives to their solicitors in London. The Court of Appeal distinguished the House of Lords’ decision in *Masri v Consolidated Contractors International Company SAL* [2009] UKHL 43, [2010] AC 90 (see [41]-[43] above) on the basis that the rule of contempt protected the “public interest” that orders should be obeyed. This was said to be “very different from the nature of the power ... to obtain information from judgments debtors”, which had the court acting in aid of private rights (at [41]-[43]). Another way of framing this point may be that the position of officers in that case was “closer to that of ordinary witnesses” (at [26]) than officers who can be expected to comply with orders made against the company based on principles of attribution (see *Dar Al Arkan Real Estate Development Co v Refai* [2014] EWCA Civ 715, [2015] WLR 135 at [32], [46]; *Masri and Manning v Consolidated Contractors International Co SAL* [2011] EWHC 409 at [88]-[89]).
- [88] Where the overseas officer’s conduct does not, in substance, amount to a breach of the order, or where the officer was not bound by the order under the relevant principles of attribution, they may still be liable for criminal contempt if they interfered with the court order: *Young v Zhang* [2017] NZCA 622, [2018] NZAR 207 (see Part C(a)). Here, the court may not have jurisdiction in relation to overseas conduct. Thus, the Guernsey Court of Appeal distinguished *Dar Al Arkan* on

the basis that the alleged contempt was a form of civil contempt, and concluded that there was no jurisdiction over the alleged contempt by an overseas non-party that took place exclusively overseas ([Tchenguiz v Akers Guernsey Court of Appeal 33/2015, 23 July 2015](#) at [125]-[127], [133]; cf *Dar Al Arkan* at [32]).

VI Conclusion

- [89] Where the court is asked to hold an overseas (non-)party in contempt for breaching an order under s 16 of the Contempt of Court Act, the person must have been bound by the order, which ordinarily means there must have been a statutory basis for subjecting the person to the court's jurisdiction (such as the rules of personal jurisdiction based on service outside of New Zealand), although this does not appear to be a requirement for directors, officers or agents of a body corporate who breach an order made against the body corporate. The court must have also had subject-matter jurisdiction to make the order. In the case of non-parties, the court's subject-matter jurisdiction to make the order needs to be carefully evaluated, because unlike with parties, it cannot be justified based on the court's jurisdiction to determine private rights and obligations.
- [90] Where the court is asked to hold an overseas (non-)party liable for breaching an order, and the proceeding is a criminal proceeding, the court cannot do so unless the person is treated as being bound by the order despite their absence, and the conduct amounts to a breach of the order for the purposes of subject-matter jurisdiction; but the court may not have power to proceed against the defendant in their absence.
- [91] Where the court is asked to hold an overseas (non-)party in (criminal) contempt for interfering with the administration of justice, the court may assume personal jurisdiction over the person for the purposes of a civil proceeding, but subject-matter jurisdiction would not ordinarily extend to overseas conduct. In light of the draconian nature of the law of contempt, courts ought to tread carefully.